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Victory Specialty Packaging, Inc. and Paper, Allied Industrial, Chemical & Energy Workers International Union and Local 1707, and Paper, Allied Industrial, Chemical & Energy Workers International Union, AFL-CIO. Case 3-CA-22425

August 18, 2000

DECISION AND ORDER

**BY CHAIRMAN TRUESDALE AND MEMBERS FOX
AND LIEBMAN**

Upon a charge filed by the Union on March 23, 2000, and an amended charge filed by the Unions on May 31, 2000, the General Counsel of the National Labor Relations Board issued a complaint on June 13, 2000, against Victory Specialty Packaging, Inc., the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although properly served copies of the charge, amended charge and complaint, the Respondent failed to file an answer.

On July 21, 2000, the General Counsel filed a Motion for Summary Judgment with the Board. On July 25, 2000, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated July 5, 2000, notified the Respondent that unless an answer were received by July 14, 2000, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a corporation, with an office and place of business in Victory Mills, New York, has been engaged in the manufacture of paper packaging products. During the calendar year ending

December 31, 1999, the Respondent, in the course and conduct of its business operations, sold and shipped from its Victory Mills facility goods valued in excess of \$50,000, directly to points outside the State of New York. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that Paper, Allied Industrial, Chemical & Energy Workers International Union, its Local 1707 and Paper, Allied Industrial, Chemical & Energy Workers International Union, AFL-CIO are labor organizations within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of Respondent, herein called the unit, constitute a unit appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All production and maintenance employees employed by Respondent at its Victory Mills, New York, plant exclusive of those engaged in administration, executive, actual supervision, sales, research, clerical, stenography, and other office work.

Since in or about the 1940's, and all material times, Paper, Allied Industrial, Chemical & Energy Workers International Union and Local 1707, and Paper, Allied Industrial, Chemical & Energy Workers International Union, AFL-CIO, have jointly been the designated exclusive collective-bargaining representative of the unit and since then have been recognized as the representative by the Respondent. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective from June 14, 1999, to April 21, 2002. At all times since the 1940's, by virtue of Section 9(a) of the Act, the above-named Unions have been the exclusive collective-bargaining representative of the unit.

Since on or about February 2, 2000, the Respondent has repudiated the current collective-bargaining agreement, by failing and refusing to make contractually required payments for severance pay, vacation pay, and health insurance premiums.

Since on or about December 1, 1999, the Respondent has repudiated the current collective-bargaining agreement, by failing and refusing to remit to the Unions the amounts it deducted from its unit employees' earnings for Union dues.

The subjects of severance pay, vacation pay, health insurance premiums, and deducted union dues relate to wages, hours, and other terms and conditions of employment of the unit and are mandatory subjects for the purposes of collective bargaining.

The Respondent engaged in the above conduct without prior notice to the Unions, without affording the Unions an opportunity to bargain with the Respondent with re-

spect to this conduct, and without the consent of the Unions.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has failed and refused to bargain collectively with the exclusive collective-bargaining representative of its employees within the meaning of Section 8(d) of the Act, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(1) and (5) by failing, since February 2, 2000, to pay contractually required severance pay, vacation pay, and health insurance premiums, and by failing, since December 1, 1999, to remit to the Unions, the dues deducted from employees' wages, we shall order the Respondent to pay the contractually required severance pay, vacation pay, and health insurance premiums, and to remit to the Unions the dues deducted from employees' wages, with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

Having found that the Respondent has violated Section 8(a)(1) and (5) by failing to maintain contractually required health insurance for its unit employees, we shall order the Respondent to restore the employees' health coverage and make the employees whole by reimbursing them for any expenses ensuing from the Respondent's unlawful conduct, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 at fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, supra.

ORDER

The National Labor Relations Board orders that the Respondent, Victory Specialty Packaging, Inc., Victory Mills, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Repudiating the June 14, 1999, to April 21, 2002, collective-bargaining agreement by failing to pay contractually required severance pay, vacation pay, and health insurance premiums, and failing to remit to the Unions the dues deducted from employees' wages.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Make the contractually required payments for severance pay, vacation pay, and health insurance premiums with interest as prescribed in the remedy section of this decision.

(b) Make all unit employees and the Unions whole, with interest as set forth in the remedy section of this decision, for any losses suffered as a result of the failure and refusal to pay contractually required severance pay, vacation pay, and health insurance premiums, and to remit to the Unions the dues deducted from bargaining unit employees' wages.

(c) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of back-pay due under the terms of this Order.

(d) Within 14 days after service by the Region, post at its facility in Victory Mills, New York, copies of the attached notice marked "Appendix."¹ Copies of the notice, on forms provided by the Regional Director for Region 3, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since December 1, 1999.

(e) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

¹ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Dated, Washington, D.C. August 18, 2000

John C. Truesdale,	Chairman
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Sarah M. Fox,	Member
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Wilma B. Liebman,	Member
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(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize
To form, join, or assist any union

To bargain collectively through representatives of their own choice

To act together for other mutual aid or protection

To choose not to engage in any of these protected concerted activities.

WE WILL NOT refuse to bargain with the Unions by repudiating the June 14, 1999, to April 21, 2002, collective-bargaining agreement by failing to pay contractually required severance pay, vacation pay, and health insurance premiums, and failing to remit to the Unions the dues deducted from employees' wages.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL make the contractually required payments for severance pay, vacation pay, and health insurance premiums on behalf of the unit employees.

WE WILL make all unit employees and the Unions whole, with interest, for any losses suffered as a result of our failure and refusal to pay contractually required severance pay, vacation pay, and health insurance premiums, and to remit to the Unions dues deducted from bargaining unit employees' wages.

VICTORY SPECIALTY PACKAGING, INC.